

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

JUL 31 PM 4:30  
U.S. DISTRICT COURT CLERK  
WESTERN DISTRICT OF TEXAS

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IN RE:

AJAY KUMAR

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EP-19-MC-00205-FM  
FILED UNDER SEAL

**MOTION TO UNSEAL FOR LIMITED PURPOSE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the United States of America (“Movant”), by and through the United States Attorney for the Western District of Texas, and hereby respectfully moves this Honorable Court to unseal the instant case for the limited purpose of authorizing the United States to provide copies of its Emergency Ex Parte Motion for Order of Authorization to Provide Non-Consensual Medical Examination and Non-Consensual Hydration, and any subsequent documents or orders that have been filed to date in the above styled and numbered cause, to the American Civil Liberties Union Foundation of Texas (“ACLU”), so that they can advise Mr. Kumar on this matter and determine whether they will represent him going forward by filing an entry of appearance on his behalf. As reasons for such motion, Movant would show the Court as follows:

1. On July 24, 2019, Movant filed its Ex Parte Motion for Order to Seal along with an Emergency Ex Parte Motion for Order of Authorization to Provide Non-Consensual Medical Examination and Non-Consensual Hydration, in the instant case. *See Doc. 1 and 3.* Movant sought an order from the court authorizing the United States Department of Homeland Security (“DHS”), Immigration and Customs Enforcement (“ICE”), to provide non-consensual medical examination (orthostatic blood pressure examinations, physical examinations, EKG, lab testing, and urinalysis) and to non-consensually hydrate in the form of IV fluids to Ajay Kumar, an ICE El Paso Processing

Center (“SPC”) detainee in its custody. Doc. 3.

2. On July 24, 2019, the Court entered its Order to Seal Ex Parte Motion (Doc. 2) and Order of Authorization Filed Under Seal. Doc. 4.

3. On July 25, 2019, Mr. Kumar’s immigration attorney, Linda Corchado,<sup>1</sup> provided Movant an “Authorization to Use and Disclose Protected Health Information In Accordance with 45 CFR ‘ 164.508-HIPAA” executed by Mr. Kumar on July 23, 2019. *See* Ex. 1.

4. On July 27, 2019, the ACLU requested from Movant copies of all filings in the instant case so they could advise their client and determine whether they would represent him going forward in the instant matter. The ACLU provided Movant with a redacted Limited Retainer Agreement wherein Mr. Kumar authorizes the ACLU to “act as [his] lawyers for the limited purpose of communicating with attorneys for the federal government … and to receive filings that have been made by the government in federal court, including those filings that have been made under seal and that may contain [his] personal information.” *See* Ex. 2.

5. That same day, based on the Limited Retainer Agreement letter provided by the ACLU, the undersigned counsel erroneously provided the ACLU with the requested documents.

6. In lieu of efforts to claw back the erroneously disclosed documents, Movant seeks to unseal the instant case for the limited purpose of authorizing the United States to provide the ACLU with copies of all pleadings and orders that have been entered to date in the instant matter.

7. The decision as to access is one left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case. *See Belo Broad. Corp. v. Clark*, 654 F.2d 423, 430 (5th Cir. 1981).

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<sup>1</sup> To the best of undersigned counsel’s knowledge, Ms. Corchado has not filed an entry of appearance and does not represent Mr. Kumar in the instant matter pending before this honorable court.

8. In the instant case, the court filings contain information of a highly sensitive and personal nature concerning Ajay Kumar's medical condition. The Privacy Act, 5 U.S.C. § 552a, requires the Executive Branch of the Federal Government to protect the personal privacy of individuals on whom it maintains records in its system of records. Based on the documents received by Movant from Mr. Kumar, or from the ACLU, Movant understands Mr. Kumar to be seeking to have all pleadings and orders in this case forwarded to the ACLU so that they can advise him on this matter and determine whether they will represent him going forward by filing an entry of appearance on his behalf.

9. Movant seeks authority from the Court to provide the ACLU with the requested documents for the limited purpose set out above. Movant seeks to have the Court's order sealing the instant case to remain in full force and effect for all other purposes.

This Motion for Order to Unseal for Limited Purpose is being sought solely to protect the privacy interests of Mr. Kumar and so that justice may be done.

WHEREFORE, the United States moves the Court to enter an order authorizing the unsealing of all pleadings and orders that have been entered to date in the instant case for the limited purpose of Movant providing copies of said documents to the ACLU.

Respectfully submitted,

**JOHN F. BASH**  
UNITED STATES ATTORNEY

  
**MANUEL ROMERO**  
Assistant United States Attorney  
Texas State Bar No.24041817  
700 E. San Antonio, Ste. 200  
El Paso, Texas 79901  
Office: (915) 534-6884  
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Email: manuel.romero@usdoj.gov  
Attorneys for United States

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

**IN RE:**

**AJAY KUMAR**

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**EP-19-MC-0205-FM**

**ORDER**

The Court, having considered the United States' Motion for Order to Unseal for Limited Purpose in the above entitled and numbered cause, finds the following:

"There is a general, common law right to inspect and copy public records and documents, including judicial records and documents, but this right is not absolute." *United States v. Sealed Search Warrants*, 868 F.3d 385, 391 (5th Cir. 2017) (citing *Nixon v. Warner Commc 'ns*, 435 U.S. 589, 597-99 (1978)). In the instant matter, the Court has balanced that right against the interests favoring nondisclosure-specifically regulations requiring the protection of the personal privacy of individuals.

Therefore, it is ORDERED that the United States' Motion should be and is hereby GRANTED.

FURTHER, it is ORDERED that the United States be authorized to provide all documents that have been filed to date in the above entitled and numbered cause to the American Civil Liberties Union Foundation of Texas. The Court's Order Sealing the instant matter remains in full force and effect for all other purposes. The Parties must seek appropriate leave for any future disclosures.

**SO ORDERED.**

SIGNED on this the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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**UNITED STATES DISTRICT JUDGE**

# EXHIBIT 1

**AUTHORIZATION TO USE AND DISCLOSE PROTECTED HEALTH INFORMATION**  
**IN ACCORDANCE WITH 45 CFR 164.508-HIPAA**

I hereby authorize all health care providers who have treated me for any condition on or after 5/1/2019 to disclose my Protected Health Information (PHI), including but not limited to highly confidential information concerning communicable diseases, HIV, AIDS, *psychiatric*, chemical or alcohol dependency, laboratory test results, or any other medical treatment, billing and business records concerning my detention w/ ICE to Linda Corchado @ Las Americas Imm Adv. Ctr. or anyone whom they may designate as their investigative agent, including but not limited to Christopher Benoit, Lynn Coyle and Aynamae Dominguez. This authorization does include psychotherapy notes.

Patients name: Ajay Kumar

A#: 215-814-283

DOB: 10/13/1985

The release of the materials listed is being authorized for use as evidence in a civil litigation matter involving this patient. You understand that such information cannot be released without the patient-specific consent. You are authorized to comply with an original or copy of this document.

**DESCRIPTION OF INFORMATION TO BE RELEASED**

Please initial the materials to be released pursuant to this authorization:

- |  |  |  |
|--|--|--|
| X    any and all medical records/reports   | X    system history or system review   | X    any counseling records  |
| X    x-rays (if requested)   | X    summary sheet   | X    admission sheet   |
| X    diagnostic studies  | X    medical service sheet   | X    charts  |
| X    laboratory slides (if requested)  | X    nurses notcs  | X    consultant reports  |
| X    clinical abstracts  | X    discharge notes   | X    any patient records not   |
| X    histories   | X    chronological survey  | X    located in the medical  |
| X    any correspondence, including any hand-written or typed notes of or from any nurse, doctor, physician, surgeon, or any other person treatment, or hospitalization | X    any other information, documents and opinions relevant to past, present and future, physical, mental and/or emotion conditions, | X    record library (such as emergency room records)<br>X    All Billing Records |

This authorization includes the release of documents in your possession whether or not created in your office or by another healthcare provider.

I understand that this authorization will expire 180 days from the date of this signed authorization or upon receipt of a revocation, whichever comes first.

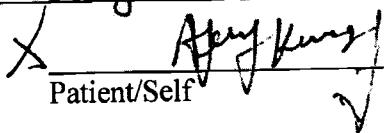
I understand that the information release in response to this authorization is subject to disclosure to other parties, and that any other person, firm or entity that releases materials pursuant to this authorization is released from any liability that might otherwise result from the release of this information.

I understand that I have a right to revoke this authorization at any time. I understand that if I revoke this authorization, I must do so in writing and present my written revocation to the physician or appropriate healthcare provider. I understand that the revocation will not apply to information that has already been released in response to this authorization.

I understand authorization for the use or disclosure of the information identified above is voluntary.

I need not sign this form to ensure healthcare treatment. I further understand that my healthcare and the payment of my healthcare will not be affected if I do not sign this form.

You are authorized to comply with an original or copy of this authorization dated on this the 23 day of July, 2019.

  
X \_\_\_\_\_  
Patient/Self 

7/23/19  
Date

# **EXHIBIT 2**



AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

## Texas

July 26, 2019

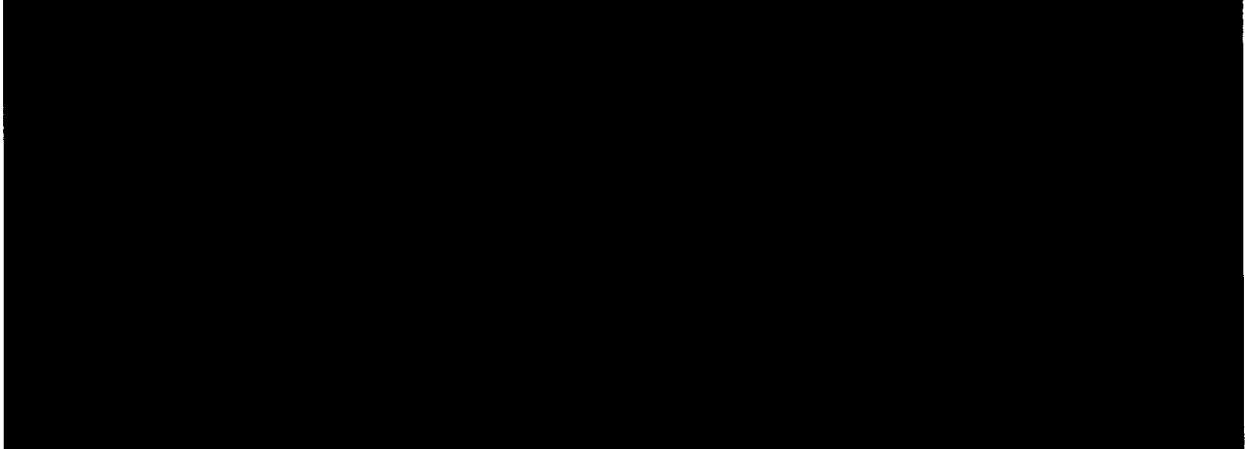
Name:

Re: Limited Retainer Agreement

Dear Ajay Kumar:

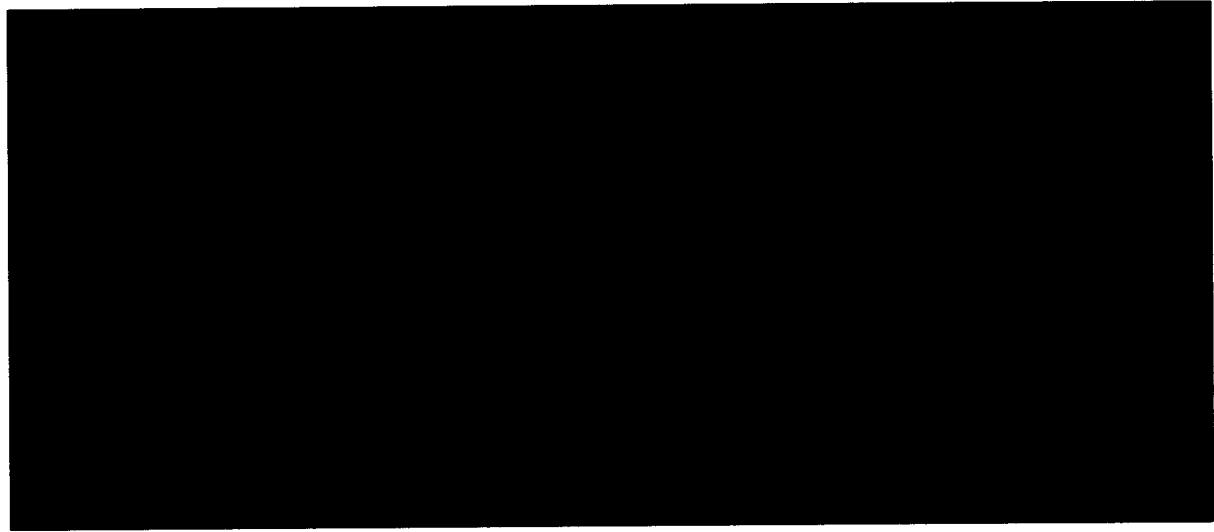
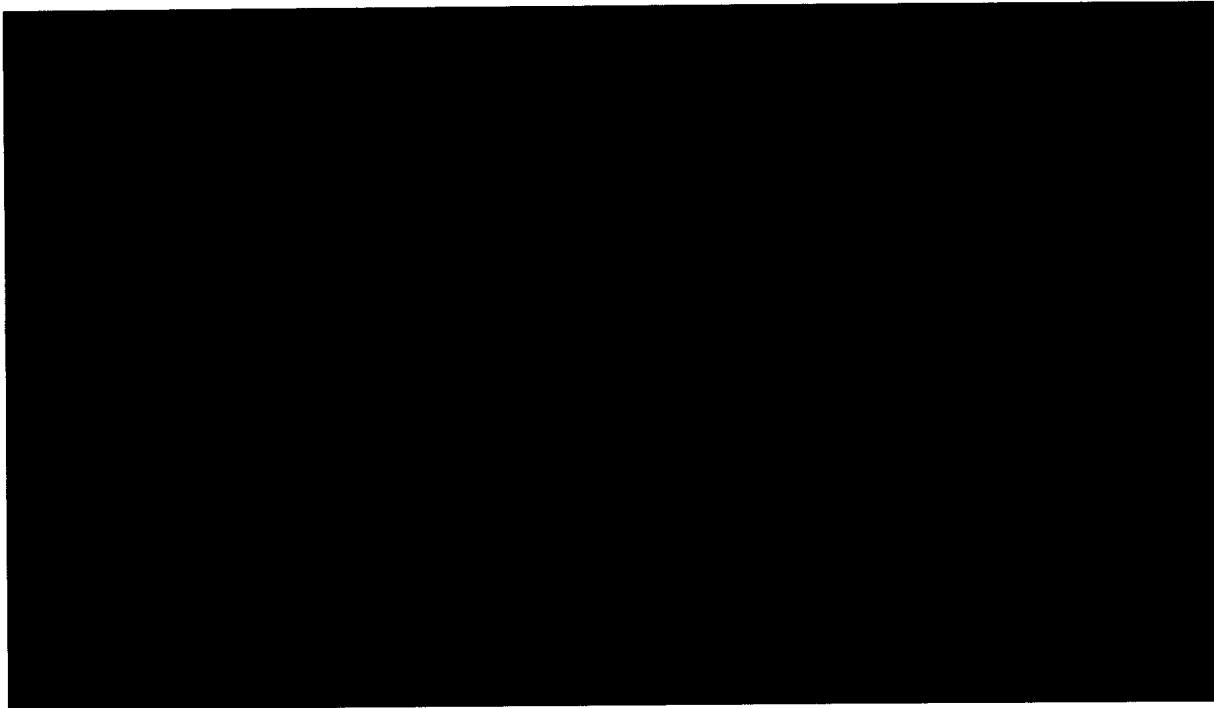
The ACLU Foundation of Texas ("ACLU") has agreed to provide you the assistance of its attorneys, Andre Segura and Tommy Buser-Clancy (collectively, the "Retained Counsel") in connection with the federal government's possible attempt to force feed you. I write now to set forth the role that the Retained Counsel will play in assisting you in this matter and what we ask of you in return.

The undersigned Retained Counsel agree to act as your lawyers for the limited purpose of communicating with attorneys for the federal government to determine whether they will seek an order to force feed you or any other court order related to your hunger strike and to receive filings that have been made by the government in federal court, including those filings that have been made under seal and that may contain your personal information.



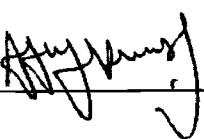
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF TEXAS

P.O. BOX 8306  
HOUSTON, TX 77288  
713.942.8146 | [WWW.ACLUTX.ORG](http://WWW.ACLUTX.ORG)  
WITH OFFICES IN AUSTIN, BROWNSVILLE, DALLAS AND EL PASO



We look forward to working with you.

Accepted and Agreed:

 \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Amy Murphy". It is positioned above a horizontal line.

7/26/2019  
Date